

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

V.

CASE NO: 2:16-CR-94-wks-1

BRIAN FOLKS

STATUS CONFERENCE

BEFORE: HONORABLE WILLIAM K. SESSIONS, III
DISTRICT JUDGE

APPEARANCES: WILLIAM DARROW, AUSA
EMILY M. SAVNER, AUSA
MATTHEW T. GRADY, AUSA, by telephone
U.S. Attorney's Office
P.O. Box 570
Burlington, Vermont, 05402
Representing the Government

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and

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DATE: March 18, 2019

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1 CLERK: This is Case number 16-94, United
2 States of America versus Brian Folks. The
3 government is present through Assistant United
4 States Attorneys William Darrow, Emily Savner,
5 and Matthew Grady who is present via telephone.

6 The defendant is present in the courtroom
7 with his attorneys, Mark Kaplan and Natasha Sen.

8 The matter before the court is a pretrial
9 conference.

10 THE COURT: All right. Mr. Grady? Can you
11 hear us?

12 MR. GRADY: Yes, your Honor. I can hear
13 very well, thank you.

14 THE COURT: Okay. Great. All right. This
15 is a pretrial conference. The parties have
16 submitted items to discuss, and I'm certainly
17 open to discuss any other items that the parties
18 wish to present at this point, but perhaps I
19 could go through some of the issues that have
20 been raised and give you my initial response.

21 The trial of course begins on Tuesday,
22 April 23rd, and the government has requested
23 that the openings not begin on that particular
24 date. Frankly, I think that jury selection may
25 take longer than one day, and we can talk about

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1 the jury selection process in a short while, but
2 I just don't think with the nature of these
3 charges and the quantity of the charges that
4 jury selection could be completed within one day
5 so that I don't believe opening statements would
6 follow on the following day.

7 The question is whether to postpone the
8 opening statements to the following Monday, and
9 that I'll ask the counsel at this point. First
10 of all, Mr. Kaplan, do you anticipate that jury
11 selection would be completed within a day?

12 MR. KAPLAN: You know, Judge, I really
13 don't know. One of the motions we were going to
14 file was, at least we are giving some
15 consideration to requesting individual voir dire
16 in this case. I don't know how the court feels
17 about that. We haven't fully developed our
18 thoughts on that.

19 THE COURT: Okay. Let me give you -- I
20 have thought about that.

21 MR. KAPLAN: Okay.

22 THE COURT: I just don't think individual
23 voir dire of the jurors is necessary. On the
24 other hand, I certainly would be willing to
25 extend the time that you have to talk with

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1 jurors in a case of this magnitude so that you
2 would have sufficient time to question jurors
3 about their particular perspectives from both
4 sides really. I just don't think it's necessary
5 to have individual jurors segregated and
6 questioned, but the resolution would be to
7 extend the period of time to give you sufficient
8 time to be able to question jurors.

9 I also thought about a process, and I'm not
10 sure it could actually work in this courtroom,
11 of having more than four rows so that you have a
12 larger pool and you begin to make, you know,
13 questions of the larger pool so that it's
14 expedited to some extent, but that I haven't
15 fully resolved in my own mind, but my reaction
16 is to extend the period of time for the
17 selection of the jury.

18 MR. KAPLAN: Would that be unlimited time,
19 Judge, without going to excess?

20 THE COURT: No, it wouldn't be unlimited
21 time, but it would be sufficient time, and
22 assuming that two days are assigned for the
23 selection of the jury as opposed to one, I think
24 adequate time for both sides to be able to
25 question jurors would be sufficient.

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1 MR. KAPLAN: Okay. Thank you, Judge.

2 THE COURT: All right. Mr. Darrow, your
3 response to that?

4 MR. DARROW: Thank you, your Honor. That's
5 a little bit of a guessing game, of course, but
6 my guess would be that we don't need -- Tuesday,
7 Wednesday, I don't think it's going to take that
8 long, but I'd be interested in hearing why you
9 think it would take a long time.

10 THE COURT: I think you'll find many jurors
11 who will say they're unable to sit on a jury
12 with these kinds of charges, and so I think that
13 adequate questioning will bring that out. You
14 don't think there's going to be a lot of jurors
15 who are going to say I can't be fair in a case
16 of this sort?

17 MR. DARROW: I may be optimistic, Judge, I
18 don't know, but, you know, our view of the case
19 generally is drug trafficking and human
20 trafficking is sort of intermixed, dovetailed in
21 this case. I mean, the drug trafficking is
22 relatively, that piece of it is not that
23 unusual, and we see a lot of, we draw juries all
24 the time for cases like that in half a day. So
25 the other which is the human trafficking and I

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1 hadn't thought that, you know, essentially
2 prostitution with some federal jurisdictional
3 pieces was so unusual that the jury would be
4 like oh, that's too emotional or inflammatory
5 for me to consider.

6 THE COURT: Well, then you're adding
7 pornography.

8 MR. DARROW: Right.

9 THE COURT: So you have a drug
10 distribution, you have pornography questions,
11 you have prostitution questions. You have aside
12 from prostitution human trafficking issues.
13 Those are the kinds of offenses which create
14 pretty emotional responses in a lot of people,
15 and my guess is that there are going to be a
16 number of people who feel that they cannot be
17 fair and impartial in this kind of case, and
18 that's why assigning two days as opposed to one
19 I think may be in order, especially if you're
20 talking about preparing your opening statements
21 and also calling your first witnesses. So it
22 would be much more realistic to suggest that on
23 Thursday, as an example, rather than Wednesday.

24 MR. DARROW: That's fine. I was, I was
25 concerned about maybe pushing openings off for a

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1 week, and the case has been so delayed I just
2 wanted to --

3 THE COURT: No, I mean, I don't think that
4 would happen. It could very well happen, but I
5 think the jury selection could happen in two
6 days, but I am sensitive to both sides being
7 able to ask probing questions of the jury to
8 make sure that we get a fair and impartial one.

9 MR. DARROW: Of course. That sounds good.
10 Tuesday, Wednesday, voir dire, tentatively
11 openings Thursday?

12 THE COURT: Okay. What do you think about
13 that, Mr. Kaplan?

14 MR. KAPLAN: Judge, I think that certainly
15 makes sense. I mean, if we finish early on
16 Wednesday the court can decide what it wants to
17 do at that point.

18 THE COURT: Well, if I tell you that
19 opening statements are going to be on Thursday
20 and we end up closing the voir dire early, I'm
21 not so sure it would be fair to say okay, let's
22 begin with the opening statements.

23 MR. KAPLAN: That's certainly fine.

24 THE COURT: Okay. All right. So that's
25 the first thing.

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1 The second thing is that I wanted to do
2 trial days four days a week as opposed to five.
3 And tell me if you have significant objections
4 to that. It would be Monday through Thursday.
5 Of course, the first week probably if we begin
6 opening statements on Thursday we would go to
7 Friday. But then after that, if you start on
8 Thursday and Friday, then seems to me three
9 weeks of going Monday through Thursday would be
10 appropriate. Tell me if you have any objection
11 to that.

12 MR. KAPLAN: The defense does not object to
13 that, your Honor.

14 MR. DARROW: No, your Honor.

15 THE COURT: All right. Deadline for
16 pretrial motions. The government suggests the
17 29th of March. It seems to me that that would
18 be appropriate. We also scheduled arguments for
19 Wednesday, the 10th of April. Tell me if that's
20 objectionable to either side.

21 MR. KAPLAN: Judge, that's acceptable. We
22 also spoke with the government before today's
23 hearing just briefly, and we have agreed on some
24 other dates that might be helpful to the court.

25 THE COURT: Oh, all right. Go ahead.

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1 MR. KAPLAN: The government would provide
2 Giglio by April 5th. We would provide our
3 expert disclosure by April 3rd. We've given a
4 disclosure that was not quite up to par from the
5 government's perspective, but our computer
6 expert is coming back on Tuesday, and we think
7 within a week of that or so he'll be able to
8 provide a full --

9 THE COURT: Okay. So that's April 3rd
10 you're going to make a disclosure of your expert
11 witnesses. The Giglio material will be
12 transferred by the government on the 5th. Okay.
13 What else?

14 MR. KAPLAN: I think that was, well, we
15 already agreed on the pretrial motions March
16 29th.

17 THE COURT: Okay.

18 MR. KAPLAN: Also there's two other motions
19 that the government indicates were outstanding,
20 number 221 and 223, and we're going to review
21 those so there's no need for the government to
22 respond to those and the court to rule on them.
23 We're going to take a second look at them.

24 THE COURT: Okay. Then on the 29th of
25 March you either will reframe those arguments or

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1 drop them.

2 MR. KAPLAN: That's correct. Thank you,
3 Judge.

4 THE COURT: Okay, then so the process by
5 which experts are disclosed and objected to.
6 Generally speaking, with experts being disclosed
7 as of the 3rd or even before that, if either
8 side has an objection to the qualifications of
9 that expert or to the testimony of the expert
10 under Daubert, it seems to me that a motion in
11 limine would be the best way of resolving this
12 because I'm going to be really dedicated to this
13 case really after the middle of the month. So
14 if there really is a Daubert concern, then a
15 motion in limine would bring that forward, and
16 we could have the hearing in advance. The
17 question, of course, is whether that's going to
18 require the testimony of any of the experts. It
19 would be helpful to know that if the objection
20 is raised that objecting party thinks that the
21 expert should testify in a motion in limine, but
22 that's the way I really would like to address
23 qualifications of the experts. Is there any
24 objection to that?

25 MR. DARROW: No. There isn't, your Honor,

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1 and I appreciate that. As I understand it the
2 defense has, I think, one expert on the digital
3 devices, and the government has an expert on the
4 digital devices, and that's the matter that
5 counsel was referring to is not really ripe yet.
6 I don't think we need court intervention. By
7 the government's view, you know, the expert, it
8 doesn't really give opinions. Pretty much just
9 click on the icon and there are these files and
10 in the files are these images. And we're a
11 little uncertain of what their expert is up to,
12 but we'll find out at some point.

13 THE COURT: So you haven't designated any
14 expert to testify about the nature of drug
15 conspiracies, the nature of human trafficking
16 conspiracies, et cetera.

17 MR. DARROW: Well, that was one of the
18 things I wanted to mention. We haven't
19 designated an expert as to, for example, lingo
20 used in heroin trafficking. So, for example,
21 partly it's because a number of witnesses, lay
22 witnesses, will testify to the familiar things
23 of there's bags of individual dosage; bundles,
24 ten bags; sleeves, ten bundles; so we're hoping
25 that that's not expert testimony. It's more

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1 just language.

2 We do have an expert as to, for the human
3 trafficking side as to what withdrawal is. What
4 the human body goes through when it's accustomed
5 to using heroin and that heroin supply is
6 interrupted, and the expert can basically say
7 this is what happens. But that's, Mr. Higgins
8 is that expert. We also have the firearms
9 expert. There's a 922(g)(1) felony in
10 possession count in there, and you're familiar
11 with this testimony.

12 THE COURT: Yes.

13 MR. DARROW: The gun passed over a state
14 line before coming into possession of the
15 defendant because it was manufactured over here
16 and it was possessed over here.

17 And then we have where, we're talking with
18 the defense about a possible maybe stipulation
19 as to the chain of custody for the drug evidence
20 and possibly dispensing with the necessity of a
21 chemist, but if that doesn't work out, another
22 expert is a chemist who will say I've tested
23 this white substance that was sent down in this
24 bag, and I've determined that it was this drug
25 or that drug.

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1 Pardon me for just a moment. I'm advised
2 by more knowledgeable counsel that we did notice
3 someone as to the drug lingo, but I think we're
4 maybe hoping that we don't need someone to say
5 I'm an expert and a sleeve means a hundred bags.

6 THE COURT: All right. That sounds like
7 that could be worked out frankly since everybody
8 is going to be using the drug lingo, both
9 witnesses perhaps being called by the defense
10 but also the government.

11 MR. DARROW: Thank you. Lastly, your
12 Honor, one stipulation the parties have agreed
13 to is that there was, as to the gun charge,
14 there was, the defendant does have a prior
15 conviction for an offense punishable by a term
16 in excess of one year so we don't have to bring
17 in a fingerprint expert or probation officer to
18 prove up the prior conviction so that might
19 smooth things a little bit.

20 THE COURT: Okay. Mr. Kaplan? Do you
21 anticipate any problems in getting any of these
22 expert witnesses qualified?

23 MR. KAPLAN: I don't, your Honor. I'm very
24 familiar with Dr. Higgins. I've used him in the
25 past. So I don't anticipate that as being an

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1 issue.

2 THE COURT: Okay. All right. So that's
3 not, that apparently is not going to create any
4 difficulty. So the admission of --

5 MR. KAPLAN: Judge, could I have one
6 minute, please?

7 THE COURT: Sure.

8 MR. KAPLAN: One second.

9 We're all set, Judge. Thank you.

10 THE COURT: Okay.

11 MR. DARROW: Your Honor, I apologize. If I
12 may, one of us had one more question about
13 experts, and that is if it's possible that the
14 parties can agree to perhaps to qualifications
15 as to expertise in particular areas, but if not
16 does the court envision just qualifying the
17 expert in front of the jury?

18 THE COURT: Yes. Let's talk about
19 self-authenticating documents. Apparently
20 there's some documents that the government
21 wishes to introduce, and, obviously, Rule 902 is
22 changed just recently, and it's a procedure that
23 I particularly like. So you have a document
24 which is self-authenticating, and there's a
25 process you'll see in the notes by which the

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1 person who wishes to introduce a document which
2 is self-authenticating notifies the other side
3 in writing of the intention to introduce this,
4 and the government or the other side then has
5 the burden to object to that. If they object to
6 that, then we have a hearing in regard to
7 whether or not this particular exhibit is
8 self-authenticating. It's Rule 902. Yes?

9 MS. SAVNER: Yes, your Honor. So we have
10 availed ourselves of that process. The
11 government has notified defense counsel of our
12 intent to use various 902 self-authenticating
13 records in a couple letters, and we also put one
14 of the letters on the docket as DCF 327.

15 So what we've noticed thus far include
16 various phone records, motel and hotel records,
17 a couple birth and death certificates that
18 aren't 902(11) records, some of which are just
19 certified copies of things, but we have noticed
20 them out of an abundance of caution. And then
21 also records from Backpage and Facebook.

22 So it's my understanding that defense
23 counsel has objections to the Backpage and
24 Facebook records, and they are planning to file
25 a motion on those specific records, but we have

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1 not received any specific objections related to
2 any of the phone records, motel or hotel
3 records.

4 THE COURT: Did you ask for a date by which
5 you would be notified?

6 MS. SAVNER: We did, and that date has come
7 and gone.

8 THE COURT: Okay.

9 MR. KAPLAN: I think, Judge, the government
10 is correct about our objections to the Backpage,
11 and we were anticipating doing that at the same
12 time we file our pretrial motions which would be
13 March 29th.

14 THE COURT: Okay. So you'll file a motion
15 in limine to exclude the introduction of the
16 Backpages.

17 MR. KAPLAN: For different reasons but yes,
18 we'll do that by the 29th.

19 THE COURT: All right. But in regard to
20 all of the other self-authenticating requests
21 for documents, you've had no objection to that?

22 MR. KAPLAN: We don't have any objections
23 but, I guess we would ask for a few days just to
24 go back and review them one more time, but I
25 think initially they look fine to us.

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1 THE COURT: Okay. All right. Any
2 objection to giving them a few more days?

3 MS. SAVNER: No, your Honor. If we could
4 have maybe a date certain for any objections?

5 THE COURT: How about March 29th?
6 Everything seems to be due on March 29th.

7 MR. KAPLAN: That's fine with us, Judge.

8 MS. SAVNER: And just in terms of counsel's
9 response on the Backpage records, he seemed to
10 indicate his objections would not be related to
11 authenticity perhaps which is the basis of the
12 written notice and the written certification so
13 if I may just inquire what the basis would be.

14 THE COURT: You're going to get that, I
15 think. He's going to file a motion or she's
16 going to file a motion. Ms. Sen, are you going
17 to file a motion or is Mr. Kaplan going to file
18 the motion?

19 MS. SEN: I think we will file it together,
20 your Honor, but it will deal with both the
21 authenticating issues and any objections whether
22 it's relevant or other evidentiary issues or
23 technical issues as to the introduction of
24 records from Backpage and Facebook.

25 THE COURT: All right. You also referred

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1 to other business records, phone records, hotel,
2 summary charts in particular. How do you intend
3 to use the summary charts?

4 MS. SAVNER: We have previously disclosed,
5 and again, this was also part of that same
6 notice on the docket at DCF 327, a summary chart
7 of hotel records given that they are, the hotel
8 records themselves are voluminous in nature. We
9 also intend to create a summary chart related to
10 results of some of the view of one of the
11 defendant's cell phones which has not been, a
12 draft hasn't been provided to defense counsel
13 yet. So I think at this point we would propose
14 that any summary charts we plan to offer would
15 maybe fall on the same deadlines, the March 29th
16 deadline to be turned over to defense and could
17 be decided at that pretrial if necessary.

18 THE COURT: Okay. Well, you filed, you
19 noticed, since you haven't notified them yet
20 over certain records that are in summaries, you
21 notify them as to all summary charts by the
22 29th, and then, of course, they have some time
23 to respond which I haven't set yet. So we have
24 a hearing on the 10th which means that probably
25 we need responses to the motions in a week?

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1 What's the week after the 29th of March?

2 CLERK: April 5th.

3 THE COURT: By April 5th. All right. So
4 you notify the defense of the summary charts
5 that you wish to use. If they have any
6 objection they should file that by the 5th, and
7 we'd address that at the hearing on the 10th.

8 All right. Confirming the vitality of
9 prior trial-related rulings, what I've seen in
10 the record is Judge Crawford's voir dire.
11 That's just his initial voir dire to the jury.
12 I didn't see anything else aside from that, and
13 the jury charge is a first draft. So I don't
14 think he's adopted or ordered what the charge
15 would be, and, frankly, the voir dire order I'd
16 probably do under my own style anyway.

17 So are there other orders that Judge
18 Crawford had rendered that you think would be
19 applicable?

20 MR. DARROW: Those are the two that we want
21 to draw the court's attention to.

22 THE COURT: Okay. So I do a very brief
23 initial voir dire in situations like this where
24 I'm giving lawyers a lot of time to ask
25 questions so standard questions. And of course

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1 of the charge to the jury is, that is a draft.
2 So nothing has been ordered.

3 MR. DARROW: With regard to the latter,
4 your Honor, could we propose maybe any
5 objections to Judge Crawford's draft by a
6 certain point? In other words, sort of use that
7 as a starting point and move on from there?

8 THE COURT: That sounds fine to me. What
9 do you think about that, Mr. Kaplan?

10 MR. KAPLAN: So the government is
11 suggesting that we respond at a certain time to
12 Judge Crawford's rulings?

13 THE COURT: So you've got a draft from
14 Judge Crawford.

15 MR. KAPLAN: Right.

16 THE COURT: By let us say the 10th of
17 April, by the hearing date, if you've got any
18 objections to the way he has couched the charge,
19 you should file those.

20 MR. KAPLAN: That would be preliminary, I'm
21 assuming.

22 THE COURT: It's all preliminary. I
23 haven't done the research. It's preliminary.

24 MR. KAPLAN: That's fine, judge. Thank
25 you.

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1 THE COURT: All right. The use by the
2 government during opening statements of certain
3 documents which it anticipates will be
4 introduced during trial.

5 My standard practice is to allow lawyers to
6 use documents in opening statements that they
7 reasonably anticipate will be introduced in
8 trial. Of course, the lawyers are running the
9 risk if all of a sudden those documents are not
10 introduced, then there could be commentary on
11 that, depending upon how relevant the documents
12 are. But if a lawyer reasonably anticipates
13 that those documents, that document is going to
14 be introduced during the course of the trial,
15 then I think he should be able to use that in
16 opening statement.

17 Now, I suppose that only becomes unfair if
18 there is a significant objection to that
19 document so that perhaps the fairest thing to do
20 in a case like this would be to require the
21 person who wants to use a document in opening
22 statement to notify the other side that they're
23 going to use the document in opening statement
24 and give them some time to object. Would you
25 disagree with that?

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1 MS. SAVNER: That sounds fine, your Honor.
2 Just for your reference, we don't plan to use
3 anything that I would classify as arguable.
4 What we're planning to use in this point in
5 opening is DMV photos or other just face-only
6 photos of some of the witnesses and photos of
7 the outside of some of the locations at issue.

8 THE COURT: All right. Mr. Kaplan, do you
9 have any objection to that?

10 MR. KAPLAN: No your Honor, that's fine.
11 Thank you.

12 THE COURT: Okay. Procedures as to the
13 publication of pornographic images. First,
14 obviously, pornographic images are broadcast to
15 the jury. No question about that. The only
16 question is whether the pornographic images are
17 broadcast to the back of the courtroom, and that
18 raises really significant constitutional
19 questions. The people who come into the
20 courtroom, especially if they happen to be
21 associated with the press, have a First
22 Amendment right to see what's going on in a
23 trial, and if I was to shut off access to those
24 images just so that the jury gets the images but
25 the press or the people in the back do not,

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1 there's a question about access to the judicial
2 process. So my inclination, frankly, although I
3 don't know what these images reveal, would be to
4 allow them broadcast to the back of the
5 courtroom. Now, that's the first question.

6 And then the second question is whether
7 those can be copied or whether they're sealed
8 after they're used, and my gut impression would
9 be that they should be sealed. They're
10 broadcast, they would be broadcast for people in
11 the jury box, to the people in the back of the
12 courtroom, but then they would be sealed.
13 That's my initial reaction. Tell me whether you
14 disagree with that.

15 MR. GRADY: Good morning, your Honor. This
16 is Matthew Grady on the phone, and I'll be able
17 to answer a couple of your questions. The one
18 about the broadcasting I just wanted to flag for
19 the court that minor Victim E will be involved
20 in at least one of these images and in one of
21 the images it technically would constitute child
22 pornography because she was under the age of 18
23 and would involve lascivious exhibition of her
24 genitals. So at least for that particular image
25 I'm not sure if the court has a preference for a

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1 shutting off of the galley view because it is
2 contraband, but outside that particular
3 photograph there are no other concerns that the
4 government has.

5 THE COURT: Okay. All right. Victim E,
6 you referred to Victim E. She has died at this
7 point; is that correct?

8 MR. GRADY: That is correct, your Honor.

9 THE COURT: Mr. Caplan, you want to respond
10 to that?

11 MR. KAPLAN: Judge, I think that's an issue
12 that maybe we can address at the point the
13 government wants to introduce that particular
14 picture because my understanding of those
15 pictures may not coincide with what the
16 government just said. So if we could reserve, I
17 don't have a problem sealing it at some point.
18 Certainly I don't have a problem not disclosing
19 child pornography, but I would like to know what
20 pictures we're talking about.

21 THE COURT: All right. We can address that
22 on the 10th. But as a general process, do you
23 have any objection to the broadcast of the
24 images to the jury, obviously, the jury should
25 see the images, but also broadcasting it to the

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1 back of the courtroom?

2 MR. KAPLAN: No, your Honor.

3 THE COURT: Okay. All right. And we'll
4 leave that one image of Victim E for further
5 discussion.

6 Disposition of the pending pretrial
7 motions. 21 and 23 is essentially withdrawn by
8 the defense. It may be substituted on the 29th
9 of March. 202 and 203 I have not reviewed.

10 MS. SAVNER: Your Honor, we did have a
11 hearing related to 202 and 203 and so, one
12 issue, so 202 is the previous defense counsel's
13 motion in limine, and you ruled on, it was sort
14 of a laundry list of things they wanted to
15 exclude.

16 THE COURT: Right. I remember ruling. I
17 granted some, I denied some, and I left under
18 advisement some.

19 MS. SAVNER: Yes.

20 THE COURT: But I don't remember, frankly,
21 I don't remember the specifics of it at this
22 point.

23 MS. SAVNER: And we weren't planning to
24 discuss them substantively today. What we were
25 wondering is how the court wanted to handle the

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1 ones on which your Honor reserved judgment on,
2 and we'd obviously like those things decided in
3 advance of trial, if possible. I think your
4 Honor was concerned that you couldn't rule on
5 the 403 issue until you knew the context in
6 which these more inflammatory perhaps pieces of
7 information might come into play in terms of the
8 testimony.

9 THE COURT: Logically, I should take this
10 up on the 10th. I mean, once all of the other
11 motions are filed and addressed, I can certainly
12 look at 202 and 203 and put that as a part of
13 the discussion on the 10th.

14 MS. SAVNER: Okay. Just so your Honor at
15 that point has the context he needs to make
16 those decisions, would it be helpful for us to
17 provide basically written proffers of how we
18 envision the evidence being relevant to our
19 case?

20 THE COURT: Okay, and giving the defense a
21 response time?

22 MS. SAVNER: Yes, so along the same
23 schedule as the others?

24 THE COURT: Yes, would be helpful. So by
25 the 29th, if you can submit how you intend to

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1 use those particular pieces of evidence, giving
2 the defense a weak to respond, and then we can
3 address it on the 10th.

4 MS. SAVNER: Okay. Thank you, your Honor.
5 And if I may with respect to 203 so that's the
6 government's motion in limine, and the one I
7 believe outstanding piece of that is the
8 statements of coconspirator Mandy Latulippe. We
9 had moved in limine that they be admitted as
10 either coconspirator statements or statements of
11 an agent. Your Honor had asked for a written
12 proffer. Basically the issue is that while Ms.
13 Latulippe will testify at trial she will likely
14 testify after her statements have been
15 introduced. So we submitted a written proffer
16 which is document 337. So to my understanding
17 that's now been fully briefed and you have the
18 proffer available.

19 THE COURT: So I'll take a look at that.

20 MS. SAVNER: Thank you.

21 THE COURT: All right. Mr. Kaplan. Any
22 response?

23 MR. KAPLAN: No, your Honor. I think we
24 have a copy of that. So far it looks acceptable
25 to us. My understanding has always been if

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1 you're going to put on a witness who's going to
2 talk about something that might not be
3 admissible until later but they do a decent
4 proffer, I think the court usually allows the
5 witness to talk about it.

6 THE COURT: Right.

7 MR. KAPLAN: Sounds like that situation.

8 THE COURT: All right. Finalizing
9 transcripts of the audio/video exhibits. I
10 mean, according to the government, they have
11 indicated that they've given you the transcripts
12 of these various exhibits for you to review.
13 Obviously, the transcripts are used while the
14 videos are being shown or audio is being played.
15 So have you reviewed those and do you have any
16 objections to those?

17 MR. KAPLAN: So we received them. It's
18 extensive. We haven't reviewed them all at this
19 point, but my guess would be that we'll probably
20 agree with 90 percent of the translation or more
21 and anything that we don't agree with I'm sure
22 we can sit down and iron out, and if there's one
23 or two issues that we can't figure out what the
24 word is, we can come to the court.

25 THE COURT: Let's say by the 10th we'll

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1 also deal with those transcripts. And if you've
2 got any objections to the transcripts, then you
3 need to let me know on the 10th and we can
4 resolve that. If there is nothing objected to,
5 then it's just assumed that the transcripts are
6 accurate and will be used to assist the jury
7 when the videos or audios are played.

8 MR. KAPLAN: Thank you, Judge.

9 THE COURT: Juror questionnaire. And tell
10 me what you mean by the juror questionnaire.

11 MR. KAPLAN: We had given some thought --
12 this may have as much success as the individual
13 voir dire -- but we had given some thought to
14 doing --

15 THE COURT: You know, that's a great way of
16 starting your argument, don't you think,
17 Mr. Kaplan? I mean, let's face it. I'm not
18 going to win this but, you know, maybe --

19 MR. KAPLAN: You never know, Judge.

20 THE COURT: You never know.

21 MR. KAPLAN: We had thought given the
22 nature of the case and maybe it's been resolved
23 by more extensive voir dire, but that we would
24 send out a more, request if we could send out a
25 more extensive jury questionnaire that would

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1 deal with a lot of the issues that are going to
2 come up at trial and might help us weed out
3 people initially without spending time in court
4 doing it, but --

5 THE COURT: You know, I just --

6 MR. KAPLAN: We could present to the court
7 and government and then the court can decide at
8 that point.

9 THE COURT: Why don't you present it to the
10 court. I agree with Mr. Darrow that this is,
11 when you break these down, these are human
12 trafficking, these are drug-related offenses,
13 they're pornography offenses. And I am not so
14 sure any of those would be benefited by a jury
15 questionnaire. I mean, I always wonder what do
16 you learn from a jury questionnaire on those
17 kinds of offenses. Obviously, there are certain
18 kinds of cases that are benefited by jury
19 questionnaire, and I think most honestly about
20 capital punishment. When you talk about whether
21 you believe in capital punishment. I mean, that
22 provides a benefit to both sides in that
23 response because people have feelings and they
24 respond to that.

25 I frankly don't see how you benefit from a

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1 jury questionnaire. I do see how you benefit by
2 a more rigorous examination of the jury on those
3 particular issues, but I'd be glad to review a
4 jury questionnaire if you want to submit one.
5 Okay?

6 Process for voir dire. You've heard my
7 thoughts. If we, say, take two days and give
8 people up to four hours of examination. That
9 may be a little excessive. I have to think
10 about that. But I think we could draw a jury in
11 two days, and that would be fair.

12 So any objection to that?

13 MR. KAPLAN: No, your Honor.

14 MR. DARROW: No, your Honor, that sounds
15 sensible. The only thought that went through my
16 mind was if we were going have multiple hours of
17 each party voir diring a group whether it could
18 be broken down by, I don't know, a half hour,
19 half hour, half hour, half hour somehow so that
20 one party didn't get the jury alone for three or
21 four hours.

22 THE COURT: I would certainly be willing to
23 consider something like that. So perhaps both
24 of you or all of you can communicate between
25 teams and come up with a thought. I just want,

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1 I don't think segregated voir dire is necessary.
2 I don't think the jury questionnaires are
3 necessary. I think the best way of trying to
4 determine whether people are biased in any
5 particular way in light of the nature of the
6 offense is to allow more rigorous voir dire
7 questioning. If you want to break it up, hour
8 at a time, half hour at a time, that's fine.
9 I've never seen that done before, but that's
10 fine.

11 MR. DARROW: Judge, if I'd just note on the
12 written questionnaire issue, I'm still so
13 scarred by the six hearings and dozen some-odd
14 filings we have on the written questionnaire in
15 the Fell case that I couldn't even think clearly
16 about it. That does end up being somewhat of a
17 rabbit hole you can go into with both parties
18 refining the verbs used in certain questions and
19 adding on additional questions, it gets
20 extensive.

21 THE COURT: Well, in capital punishment you
22 can really see the advantage of a questionnaire
23 because people have strong feelings and they
24 react to the question of --

25 MR. DARROW: Sure.

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1 THE COURT: -- capital punishment. Here
2 when you're talking about drug cases or talking
3 about pornography or human trafficking in
4 particular, what does that mean to people. And
5 it seems to me like the best responses from
6 individual jurors is in response to a question
7 in court.

8 Anyway, that's my thought. Okay. So I've
9 gone through the government's list of
10 suggestions that they wanted resolved. I've
11 given a number of answers. Is there anything
12 else from the government first?

13 MR. DARROW: No, it's been very helpful,
14 and we're grateful to you, your Honor. Thank
15 you.

16 THE COURT: Well, you should know that I've
17 really dedicated most of my time from the middle
18 of April on. So we'll be especially, I assume
19 that there will be a number of motions filed on
20 the 10th so this is going to take a lot of
21 effort. Okay? Mr. Kaplan? Or Ms. Sen? Do you
22 have any?

23 MR. KAPLAN: I think we're all set. Thank
24 you, Judge.

25 THE COURT: All right. Thank you.

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MR. DARROW: Thank you, your Honor.

C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

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